

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA**

BALCH & BINGHAM LLP,                     )  
  )  
                  Plaintiff,                     )  
  )  
v.   )  
  )  
U.S. COMMODITY FUTURES                 )  
TRADING COMMISSION,                     )  
  )  
                  Defendant.                 )

Civ. No.: CV-08-HGD-2281-S

**DEFENDANT COMMODITY FUTURES TRADING COMMISSION'S  
MOTION TO DISMISS FOR FAILURE TO EXHAUST  
ADMINISTRATIVE REMEDIES**

Exhibit 1 Declaration of Stacy Easter (with attached Exhibit A and Exhibit B)  
Exhibit A, Plaintiff's Emailed FOIA Requests;  
Exhibit B, CFTC Response to FOIA Request, dated 6 Nov 2008.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA**

BALCH & BINGHAM LLP,

Plaintiff,

v.

U.S. COMMODITY FUTURES  
TRADING COMMISSION,

Defendant.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

Civ. No.: CV-08-HGD-2281-S

**DECLARATION OF STACY EASTER**

I, Stacy Easter, declare as follows:

1. I am a Paralegal Specialist with the Commodity Futures Trading Commission ("CFTC") and am responsible for processing Freedom of Information Requests received by the CFTC. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could competently testify to the matters contained in this Declaration.
2. On September 12, 2008, I received several emails from Ms. Kelly Brennan, an attorney with Balch & Bingham ("Balch") seeking information under FOIA. After receiving the first dozen or so emails, I received a telephone call from Ms. Brennan, asking me if I had received the first several requests. I responded that I had received them. Ms. Brennan informed me that she would be submitting several more email requests over the next few days and that she would probably send the final request the following week. Ms. Brennan asked whether the agency would wait until receiving the final email before starting to process the requests. I responded that I would wait to process the requests

until I had received the entire request. Ms. Brennan's several email requests are attached as Exhibit A.

3. The FOIA requests asked for information that had previously been submitted to the CFTC by Dynegy Marketing and Trade ("Dynegy") and El Paso Merchant Energy ("El Paso") in response to investigative requests by the CFTC.
4. On September 16, 2008, I forwarded Ms. Brennan's requests to the pertinent divisions within the CFTC that might have responsive information, primarily the CFTC's Division of Enforcement.
5. On Sept 22, I learned from the Division of Enforcement at the CFTC's New York office that there were ongoing criminal proceedings being handled by the U.S. Attorney's office in Texas involving El Paso, and also that El Paso and Dynegy had previously requested confidential treatment for the materials being requested by Balch. The CFTC maintains a file of all such Requests for Confidential Treatment. I searched the file and located a 2003 Request for Confidential Treatment from El Paso. I made several phone calls to El Paso to ascertain whom I should speak with about this request and eventually received a call from Stuart Plunkett, an attorney with the law firm of Morrison Foerster. Mr. Plunkett informed me that his firm represented El Paso and that El Paso would like certain of its documents to be kept confidential. I received an email on September 26, 2008 from Mr. Plunkett confirming our telephone call.
6. On September 29, 2008, I received a response the Division of Enforcement's Washington, DC office stating that it did not have any documents responsive to Balch's FOIA request. On September 29, 2008, I also received information indicating that the Division of Enforcement's New York office had located responsive information for both

- El Paso and Dynegey, but that all of the information (consisting of six CDs and thousands of pages of documents) should be withheld pursuant to FOIA Exemptions 7(b) and 7(e).
7. On October 2, 2008, I received a response from the Division of Enforcement's Chicago office stating that it had located 997 pages of responsive documents, but that material should be withheld pursuant to FOIA Exemptions 3, 5 and 7(a).
  8. On October 3, 2008, I inquired of the Division of Enforcement as to whether it was granting El Paso's Request for Confidential Treatment and requested more specificity as to the asserted basis for withholding the responsive information located by that office.
  9. On October 6, 2008, I received a response from the Division of Enforcement stating (1) that it was not simply granting the Request for Confidential Treatment based on the 2003 request, and (2) that the Division of Enforcement would like additional information from El Paso before making a determination whether to grant the Request for Confidential Treatment.
  10. On October 6, 2008, I sent a letter via email to Mr. Plunkett at Morrison & Foerster informing him of the FOIA request and asking that he submit a detailed written justification stating why the agency should continue to grant confidential treatment to the documents requested by Balch.
  11. On October 13, 2008, I called the attorney for Dynegey, Mr. Michael Kass at Pillsbury Winthrop, and told him that the CFTC had received a FOIA request seeking the same information that had been requested in an earlier FOIA request by a different party. I informed Mr. Kass if he did not want us to use his prior Detailed Written Justification, submitted on October 13, 2008, he would be required to submit a new one and asked that we rely on the earlier justification.

12. I received El Paso's Detailed Written Justification on October 20, 2008. I forwarded both Detailed Written Justifications to the Division of Enforcement's New York office so that it could make a determination as to whether to grant the Requests for Confidential Treatment.
13. On November 5, 2008, I received a phone call from Ms. Brennan inquiring about the status of Balch's requests. I informed her of the status and told her about the Requests for Confidential Treatment. She asked if the CFTC had any information that was not subject to the Requests for Confidential Treatment that the CFTC could send to Balch.
14. On November 6, I sent the CFTC's partial response to Balch's FOIA request to Ms. Brennan via email and included copies of the detailed written justifications from Dynegey and El Paso. This response is attached as Exhibit B.
15. I received an email from Joe Rosenberg confirming the ongoing Texas criminal proceeding on November 19, 2008.
16. On December 4, 2008, I received information from the Division of Enforcement (1) confirming that the responsive documents would be withheld pursuant to FOIA Exemptions 3, 4, and 7; and (2) advising that the Division of Enforcement had decided to grant both Dynegey's and El Paso's Requests for Confidential Treatment.
17. On December 10, 2008, I sent letters to both Dynegey and El Paso regarding the CFTC's decision to grant their requests for confidential treatment of their documents. I also sent a final response to Ms. Brennan denying the remainder of Balch's FOIA request.
18. On January 8, 2009, I received via email a copy of Balch's administrative appeal.

Pursuant to 28 U.S.C. §1736, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 9<sup>th</sup> day of February, 2008.

  
Stacy Easter

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA**

BALCH & BINGHAM LLP,                    )  
  )  
                  Plaintiff,                    )  
  )  
v.    )  
  )  
U.S. COMMODITY FUTURES                )  
TRADING COMMISSION,                    )  
  )  
                  Defendant.                )

Civ. No.: CV-08-HGD-2281-S

**DEFENDANT COMMODITY FUTURES TRADING COMMISSION'S  
MOTION TO DISMISS FOR FAILURE TO EXHAUST  
ADMINISTRATIVE REMEDIES**

Exhibit A to Declaration of Stacy Easter --- Plaintiff's Emailed FOIA Requests

.





08-0141

**Easter, Stacy**

**From:** kbrennan@balch.com  
**Sent:** Friday, September 12, 2008 3:31 PM  
**To:** FOIAsubmissions  
**Subject:** Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Friday, September 12, 2008 at 15:30:38

---

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552,  
we request information or records regarding the Commodity  
Futures Trading Commission's investigation into the  
conduct of and proceedings against El Paso, Dynegy  
Marketing & Trade and West Coast Power LLC in the In re El  
Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In  
re Dynegy Marketing & Trade and West Coast Power LLC, CFTC  
Docket No. 03-03].

All documents and/or information relied upon by the CFTC  
in connection with the following statement(s) made in the  
order instituting proceedings pursuant to 6(c) and 6(d)  
of the Commodity Exchange Act, making findings and  
imposing remedial sanctions in the matter of El Paso  
Merchant Energy, L.P., CFTC Docket No.: 03-09, pending  
before the Commodity Futures Trading Commissions:

EPME reported false natural gas information,  
including price and volume information about natural gas  
cash transactions it purportedly made, to certain  
reporting firms and thereby attempted to manipulate the  
natural gas market.

I agree to pay any search, review, or copying fees that  
may be incurred in processing this request. In the event  
the CFTC believes the fees will exceed \$500.00, we  
respectfully request notification of an estimate for the  
copying and research so that we have an opportunity to  
narrow the request.

If you have questions or need further information, please  
do not hesitate to contact me by email, at  
kbrennan@balch.com, or by telephone at (205) 226-3475.

\_4\_name: A. Kelly Brennan, Esq.

firm: Balch & Bingham LLP

\_4\_address1: P.O. Box 306

**Easter, Stacy**

---

**From:** kbrennan@balch.com  
**Sent:** Friday, September 12, 2008 3:40 PM  
**To:** FOIAsubmissions  
**Subject:** Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Friday, September 12, 2008 at 15:39:44

---

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03].

All documents and/or information relied upon by the CFTC in connection with the following statement(s) made in the order instituting proceedings pursuant to 6(c) and 6(d) of the Commodity Exchange Act, making findings and imposing remedial sanctions in the matter of El Paso Merchant Energy, L.P., CFTC Docket No.: 03-09, pending before the Commodity Futures Trading Commissions:

EPME knowingly reported non-existent trades to the reporting firms while at the same time withholding information about actual trades it made from the reporting firms. EPME did so in an attempt to skew those indexes to Respondent's financial benefit.

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

\_4\_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

Easter, Stacy

---

From: kbrennan@balch.com  
Sent: Friday, September 12, 2008 3:43 PM  
To: FOIAsubmissions  
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Friday, September 12, 2008 at 15:43:18

---

information: Pursuant to the Freedom of Information Act, 5 U.S.C.  
552, we request information or records regarding the  
Commodity Futures Trading Commission's investigation into  
the conduct of and proceedings against El Paso, Dynegy  
Marketing & Trade and West Coast Power LLC in the In re El  
Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In  
re Dynegy Marketing & Trade and West Coast Power LLC, CFTC  
Docket No. 03-03].

All documents and/or information relied upon by  
the CFTC in connection with the following statement(s)  
made in the order instituting proceedings pursuant to  
6(c) and 6(d) of the Commodity Exchange Act, making  
findings and imposing remedial sanctions in the matter of  
El Paso Merchant Energy, L.P., CFTC Docket No.: 03-09,  
pending before the Commodity Futures Trading Commissions:

EPME did not maintain certain required records  
concerning the information it provided to the reporting  
firms as required by Commission regulations.

I agree to pay any search, review, or copying fees  
that may be incurred in processing this request. In the  
event the CFTC believes the fees will exceed \$500.00, we  
respectfully request notification of an estimate for the  
copying and research so that we have an opportunity to  
narrow the request.

If you have questions or need further information,  
please do not hesitate to contact me by email, at  
kbrennan@balch.com, or by telephone at (205) 226-3475.

\_4\_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

\_4\_address1: P.O. Box 306

**Easter, Stacy**

---

**From:** kbrennan@balch.com  
**Sent:** Friday, September 12, 2008 3:46 PM  
**To:** FOIAsubmissions  
**Subject:** Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Friday, September 12, 2008 at 15:46:01

---

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03].

All documents and/or information relied upon by the CFTC in connection with the following statement(s) made in the order instituting proceedings pursuant to 6(c) and 6(d) of the Commodity Exchange Act, making findings and imposing remedial sanctions in the matter of El Paso Merchant Energy, L.P., CFTC Docket No.: 03-09, pending before the Commodity Futures Trading Commissions:

EPME initiated an internal investigation by hiring an independent law firm to conduct a timely investigation relating to false reports to price gathering and reporting services.

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

\_4\_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

**Easter, Stacy**

---

**From:** kbrennan@balch.com  
**Sent:** Friday, September 12, 2008 3:53 PM  
**To:** FOIAsubmissions  
**Subject:** Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Friday, September 12, 2008 at 15:53:22

---

information: Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request information or records regarding the Commodity Futures Trading Commission's investigation into the conduct of and proceedings against El Paso, Dynegy Marketing & Trade and West Coast Power LLC in the In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In re Dynegy Marketing & Trade and West Coast Power LLC, CFTC Docket No. 03-03].

All documents and/or information relied upon by the CFTC in connection with the following statement(s) made in the order instituting proceedings pursuant to 6(c) and 6(d) of the Commodity Exchange Act, making findings and imposing remedial sanctions in the matter of El Paso Merchant Energy, L.P., CFTC Docket No.: 03-09, pending before the Commodity Futures Trading Commissions:

From at least June 2000 through November 2001, Respondents provided false reports to the reporting firms and failed to keep copies of required reports.

I agree to pay any search, review, or copying fees that may be incurred in processing this request. In the event the CFTC believes the fees will exceed \$500.00, we respectfully request notification of an estimate for the copying and research so that we have an opportunity to narrow the request.

If you have questions or need further information, please do not hesitate to contact me by email, at kbrennan@balch.com, or by telephone at (205) 226-3475.

\_4\_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

\_4\_address1: P.O. Box 306

**Easter, Stacy**

---

**From:** kbrennan@balch.com  
**Sent:** Friday, September 12, 2008 4:10 PM  
**To:** FOIAsubmissions  
**Subject:** Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Friday, September 12, 2008 at 16:09:40

---

information: Pursuant to the Freedom of Information Act, 5  
U.S.C. 552, we request information or records regarding  
the Commodity Futures Trading Commission's investigation  
into the conduct of and proceedings against El Paso,  
Dynergy Marketing & Trade and West Coast Power LLC in the  
In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09  
and In re Dynergy Marketing & Trade and West Coast Power  
LLC, CFTC Docket No. 03-03].

All documents and/or information relied upon by  
the CFTC in connection with the following statement(s)  
made in the order instituting proceedings pursuant to  
6(c) and 6(d) of the Commodity Exchange Act, making  
findings and imposing remedial sanctions in the matter of  
El Paso Merchant Energy, L.P., CFTC Docket No.: 03-09,  
pending before the Commodity Futures Trading Commissions:

The false reports included altering price and  
volume of actual trades and reporting non-existent trades  
using telephones, faxes, and the internet.

I agree to pay any search, review, or copying fees  
that may be incurred in processing this request. In the  
event the CFTC believes the fees will exceed \$500.00, we  
respectfully request notification of an estimate for the  
copying and research so that we have an opportunity to  
narrow the request.

If you have questions or need further information,  
please do not hesitate to contact me by email, at  
kbrennan@balch.com, or by telephone at (205) 226-3475.

\_4\_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

\_4\_address1: P.O. Box 306

**Easter, Stacy**

---

**From:** kbrennan@balch.com  
**Sent:** Friday, September 12, 2008 4:24 PM  
**To:** FOIAsubmissions  
**Subject:** Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Friday, September 12, 2008 at 16:24:13

---

information: Pursuant to the Freedom of Information Act, 5  
U.S.C. 552, we request information or records regarding  
the Commodity Futures Trading Commission's investigation  
into the conduct of and proceedings against El Paso,  
Dynergy Marketing & Trade and West Coast Power LLC in the  
In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09  
and In re Dynergy Marketing & Trade and West Coast Power  
LLC, CFTC Docket No. 03-03].

All documents and/or information relied upon by  
the CFTC in connection with the following statement(s)  
made in the order instituting proceedings pursuant to  
6(c) and 6(d) of the Commodity Exchange Act, making  
findings and imposing remedial sanctions in the matter of  
El Paso Merchant Energy, L.P., CFTC Docket No.: 03-09,  
pending before the Commodity Futures Trading Commissions:

Respondent's employees provided false trade data  
because they believed that it benefited their trading  
positions or derivatives contracts.

I agree to pay any search, review, or copying fees  
that may be incurred in processing this request. In the  
event the CFTC believes the fees will exceed \$500.00, we  
respectfully request notification of an estimate for the  
copying and research so that we have an opportunity to  
narrow the request.

If you have questions or need further information,  
please do not hesitate to contact me by email, at  
kbrennan@balch.com, or by telephone at (205) 226-3475.

\_4\_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

\_4\_address1: P.O. Box 306

**Easter, Stacy**

---

**From:** kbrennan@balch.com  
**Sent:** Friday, September 12, 2008 4:35 PM  
**To:** FOIAsubmissions  
**Subject:** Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Friday, September 12, 2008 at 16:35:27  
-----

information: Pursuant to the Freedom of Information Act, 5 U.S.C.  
552, we request information or records regarding the  
Commodity Futures Trading Commission's investigation into  
the conduct of and proceedings against El Paso, Dynegy  
Marketing & Trade and West Coast Power LLC in the In re El  
Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In  
re Dynegy Marketing & Trade and West Coast Power LLC, CFTC  
Docket No. 03-03].

All documents and/or information relied upon by  
the CFTC in connection with the following statement(s)  
made in the order instituting proceedings pursuant to  
6(c) and 6(d) of the Commodity Exchange Act, making  
findings and imposing remedial sanctions in the matter of  
El Paso Merchant Energy, L.P., CFTC Docket No.: 03-09,  
pending before the Commodity Futures Trading Commissions:

Respondents also failed to report actual trades  
to the reporting firms.

I agree to pay any search, review, or copying fees  
that may be incurred in processing this request. In the  
event the CFTC believes the fees will exceed \$500.00, we  
respectfully request notification of an estimate for the  
copying and research so that we have an opportunity to  
narrow the request.

If you have questions or need further information,  
please do not hesitate to contact me by email, at  
kbrennan@balch.com, or by telephone at (205) 226-3475.

\_4\_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

\_4\_address1: P.O. Box 306



**Easter, Stacy**

---

**From:** kbrennan@balch.com  
**Sent:** Friday, September 12, 2008 4:43 PM  
**To:** FOIAsubmissions  
**Subject:** Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Friday, September 12, 2008 at 16:43:17

---

information: Pursuant to the Freedom of Information Act, 5  
U.S.C. 552, we request information or records regarding  
the Commodity Futures Trading Commission's investigation  
into the conduct of and proceedings against El Paso,  
Dynegy Marketing & Trade and West Coast Power LLC in the  
In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09  
and In re Dynegy Marketing & Trade and West Coast Power  
LLC, CFTC Docket No. 03-03].

All documents and/or information relied upon by  
the CFTC in connection with the following statement(s)  
made in the order instituting proceedings pursuant to  
6(c) and 6(d) of the Commodity Exchange Act, making  
findings and imposing remedial sanctions in the matter of  
El Paso Merchant Energy, L.P., CFTC Docket No.: 03-09,  
pending before the Commodity Futures Trading Commissions:

Respondents violated 9(a)(2) of the Act when  
its employees knowingly delivered false price and volume  
information, including non-existent trades, to the  
reporting firms.

I agree to pay any search, review, or copying fees  
that may be incurred in processing this request. In the  
event the CFTC believes the fees will exceed \$500.00, we  
respectfully request notification of an estimate for the  
copying and research so that we have an opportunity to  
narrow the request.

If you have questions or need further information,  
please do not hesitate to contact me by email, at  
kbrennan@balch.com, or by telephone at (205) 226-3475.

\_4\_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

\_4\_address1: P.O. Box 306

**Easter, Stacy**

---

**From:** kbrennan@balch.com  
**Sent:** Friday, September 12, 2008 4:46 PM  
**To:** FOIAsubmissions  
**Subject:** Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Friday, September 12, 2008 at 16:45:49  
-----

information: Pursuant to the Freedom of Information Act, 5  
U.S.C. 552, we request information or records regarding  
the Commodity Futures Trading Commission's investigation  
into the conduct of and proceedings against El Paso,  
Dynergy Marketing & Trade and West Coast Power LLC in the  
In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09  
and In re Dynergy Marketing & Trade and West Coast Power  
LLC, CFTC Docket No. 03-03].

All documents and/or information relied upon by  
the CFTC in connection with the following statement(s)  
made in the order instituting proceedings pursuant to  
6(c) and 6(d) of the Commodity Exchange Act, making  
findings and imposing remedial sanctions in the matter of  
El Paso Merchant Energy, L.P., CFTC Docket No.: 03-09,  
pending before the Commodity Futures Trading Commissions:

Respondents specifically intended to report false  
or misleading or knowingly inaccurate market information  
concerning, among other things, trade prices and volume of  
trading, and failed to report actual market information in  
an attempt to manipulate the price of natural gas and  
interstate commerce.

I agree to pay any search, review, or copying fees  
that may be incurred in processing this request. In the  
event the CFTC believes the fees will exceed \$500.00, we  
respectfully request notification of an estimate for the  
copying and research so that we have an opportunity to  
narrow the request.

If you have questions or need further information,  
please do not hesitate to contact me by email, at  
kbrennan@balch.com, or by telephone at (205) 226-3475.

\_4\_name: A. Kelly Brennan Esq.

Easter, Stacy

---

From: kbrennan@balch.com  
Sent: Friday, September 12, 2008 4:54 PM  
To: FOIAsubmissions  
Subject: Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Friday, September 12, 2008 at 16:53:56

---

information: Pursuant to the Freedom of Information Act, 5  
U.S.C. 552, we request information or records regarding  
the Commodity Futures Trading Commission's investigation  
into the conduct of and proceedings against El Paso,  
Dynegy Marketing & Trade and West Coast Power LLC in the  
In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09  
and In re Dynegy Marketing & Trade and West Coast Power  
LLC, CFTC Docket No. 03-03].

All documents and/or information relied upon by  
the CFTC in connection with the following statement(s)  
made in the order instituting proceedings pursuant to  
6(c) and 6(d) of the Commodity Exchange Act, making  
findings and imposing remedial sanctions in the matter of  
El Paso Merchant Energy, L.P., CFTC Docket No.: 03-09,  
pending before the Commodity Futures Trading Commissions:

Respondent's provision of the false reports and  
failure to report actual trades constitute overt acts and  
furtherance of the attempted manipulation.

I agree to pay any search, review, or copying fees  
that may be incurred in processing this request. In the  
event the CFTC believes the fees will exceed \$500.00, we  
respectfully request notification of an estimate for the  
copying and research so that we have an opportunity to  
narrow the request.

If you have questions or need further information,  
please do not hesitate to contact me by email, at  
kbrennan@balch.com, or by telephone at (205) 226-3475.

\_4\_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

\_4\_address1: P.O. Box 306

**Easter, Stacy**

---

**From:** kbrennan@balch.com  
**Sent:** Friday, September 12, 2008 4:56 PM  
**To:** FOIAsubmissions  
**Subject:** Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Friday, September 12, 2008 at 16:56:17

---

information: Pursuant to the Freedom of Information Act, 5  
U.S.C. 552, we request information or records regarding  
the Commodity Futures Trading Commission's investigation  
into the conduct of and proceedings against El Paso,  
Dynegy Marketing & Trade and West Coast Power LLC in the  
In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09  
and In re Dynegy Marketing & Trade and West Coast Power  
LLC, CFTC Docket No. 03-03].

All documents and/or information relied upon by  
the CFTC in connection with the following statement(s)  
made in the order instituting proceedings pursuant to  
6(c) and 6(d) of the Commodity Exchange Act, making  
findings and imposing remedial sanctions in the matter of  
El Paso Merchant Energy, L.P., CFTC Docket No.: 03-09,  
pending before the Commodity Futures Trading Commissions:

By failing to keep the required records,  
including records of what EPME relayed to the reporting  
firms, EPME violated Commission Regulations 1.31, 1.35 and  
1.40.

I agree to pay any search, review, or copying fees  
that may be incurred in processing this request. In the  
event the CFTC believes the fees will exceed \$500.00, we  
respectfully request notification of an estimate for the  
copying and research so that we have an opportunity to  
narrow the request.

If you have questions or need further information,  
please do not hesitate to contact me by email, at  
kbrennan@balch.com, or by telephone at (205) 226-3475.

\_4\_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

\_4\_address1: P.O. Box 306

**Easter, Stacy**

---

**From:** kbrennan@balch.com  
**Sent:** Friday, September 12, 2008 5:04 PM  
**To:** FOIAsubmissions  
**Subject:** Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Friday, September 12, 2008 at 17:03:48  
-----

information: Pursuant to the Freedom of Information Act, 5  
U.S.C. 552, we request information or records regarding  
the Commodity Futures Trading Commission's investigation  
into the conduct of and proceedings against El Paso,  
Dynegy Marketing & Trade and West Coast Power LLC in the  
In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09  
and In re Dynegy Marketing & Trade and West Coast Power  
LLC, CFTC Docket No. 03-03.

All documents and/or information relating to  
interview reports of current and former EPME traders  
provided to the Commission staff by EPME

I agree to pay any search, review, or copying fees  
that may be incurred in processing this request. In the  
event the CFTC believes the fees will exceed \$500.00, we  
respectfully request notification of an estimate for the  
copying and research so that we have an opportunity to  
narrow the request.

If you have questions or need further information,  
please do not hesitate to contact me by email, at  
kbrennan@balch.com, or by telephone at (205) 226-3475.

\_4\_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

\_4\_address1: P.O. Box 306

\_4\_city: Birmingham

\_4\_state: AL

\_4\_zip: 35201-0306

fax: 205-488-5828

**Easter, Stacy**

---

**From:** kbrennan@balch.com  
**Sent:** Friday, September 12, 2008 5:20 PM  
**To:** FOIAsubmissions  
**Subject:** Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Friday, September 12, 2008 at 17:19:52  
-----

information: Pursuant to the Freedom of Information Act, 5  
U.S.C. 552, we request information or records regarding  
the Commodity Futures Trading Commission's investigation  
into the conduct of and proceedings against El Paso,  
Dynergy Marketing & Trade and West Coast Power LLC in the  
In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09  
and In re Dynergy Marketing & Trade and West Coast Power  
LLC, CFTC Docket No. 03-03.

All analysis and trading data provided to the  
Commission staff by EPME, which detailed all reported and  
all actual trades in the natural gas markets

I agree to pay any search, review, or copying fees  
that may be incurred in processing this request. In the  
event the CFTC believes the fees will exceed \$500.00, we  
respectfully request notification of an estimate for the  
copying and research so that we have an opportunity to  
narrow the request.

If you have questions or need further information,  
please do not hesitate to contact me by email, at  
kbrennan@balch.com, or by telephone at (205) 226-3475

\_4\_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

\_4\_address1: P.O. Box 306

\_4\_city: Birmingham

\_4\_state: AL

\_4\_zip: 35201-0306

fax: 205-488-5828

**Easter, Stacy**

---

**From:** kbrennan@balch.com  
**Sent:** Friday, September 12, 2008 5:33 PM  
**To:** FOIAsubmissions  
**Subject:** Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Friday, September 12, 2008 at 17:32:33

---

information: Pursuant to the Freedom of  
Information Act, 5 U.S.C. 552, we request information or  
records regarding the Commodity Futures Trading Commission  
s investigation into the conduct of and proceedings  
against El Paso, Dynegy Marketing & Trade and West Coast  
Power LLC in the In re El Paso Merchant Energy, L.P., CFTC  
Docket No. 03-09 and In re Dynegy Marketing & Trade and  
West Coast Power LLC, CFTC Docket No. 03-03.

All e-mails and audio recordings provided by EPME  
to the Commission staff

I agree to pay any search, review, or copying fees  
that may be incurred in processing this request. In the  
event the CFTC believes the fees will exceed \$500.00, we  
respectfully request notification of an estimate for the  
copying and research so that we have an opportunity to  
narrow the request.

If you have questions or need further information,  
please do not hesitate to contact me by email, at  
kbrennan@balch.com, or by telephone at (205) 226-3475.

\_4\_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

\_4\_address1: P.O. Box 306

\_4\_city: Birmingham

\_4\_state: AL

\_4\_zip: 35201-0306

fax: 205-488-5828

phone: 205-226-3475

**Easter, Stacy**

---

**From:** kbrennan@balch.com  
**Sent:** Friday, September 12, 2008 5:34 PM  
**To:** FOIAsubmissions  
**Subject:** Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Friday, September 12, 2008 at 17:34:05

---

information: Pursuant to the Freedom of Information Act, 5  
U.S.C. 552, we request information or records regarding  
the Commodity Futures Trading Commission's investigation  
into the conduct of and proceedings against El Paso,  
Dynergy Marketing & Trade and West Coast Power LLC in the  
In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09  
and In re Dynergy Marketing & Trade and West Coast Power  
LLC, CFTC Docket No. 03-03.

All testimony or interview notes relating to EPME  
s senior risk manager's explanation of EPME's risk  
management operations

I agree to pay any search, review, or copying fees  
that may be incurred in processing this request. In the  
event the CFTC believes the fees will exceed \$500.00, we  
respectfully request notification of an estimate for the  
copying and research so that we have an opportunity to  
narrow the request.

If you have questions or need further information,  
please do not hesitate to contact me by email, at  
kbrennan@balch.com, or by telephone at (205) 226-3475.

\_4\_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

\_4\_address1: P.O. Box 306

\_4\_city: Birmingham

\_4\_state: AL

\_4\_zip: 35201-0306

fax: 205-488-5828

phone: 205-226-3475



**Easter, Stacy**

---

**From:** kbrennan@balch.com  
**Sent:** Monday, September 15, 2008 10:59 AM  
**To:** FOIAsubmissions  
**Subject:** Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Monday, September 15, 2008 at 10:58:47

---

information: Pursuant to the Freedom of Information Act, 5  
U.S.C. 552, we request information or records regarding  
the Commodity Futures Trading Commission's investigation  
into the conduct of and proceedings against El Paso,  
Dynergy Marketing & Trade and West Coast Power LLC in the  
In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09  
and In re Dynergy Marketing & Trade and West Coast Power  
LLC, CFTC Docket No. 03-03.

All documents and/or information relied upon by  
the CFTC in connection with the following statement(s)  
made in the Order instituting proceedings pursuant to  
6(c) and 6(d) of the Commodity Exchange Act, making  
findings and imposing remedial sanctions, in the matter of  
Dynergy Marketing and Trade and West Coast Power, LLC, CFTC  
Docket No.: 03-03, pending before the Commodities Futures  
Trading Commission:

From at least January 2000 through June 2002 (the  
relevant period), Respondents reported false natural gas  
trading information, including price and volume  
information, to certain reporting firms.

I agree to pay any search, review, or copying fees  
that may be incurred in processing this request. In the  
event the CFTC believes the fees will exceed \$500.00, we  
respectfully request notification of an estimate for the  
copying and research so that we have an opportunity to  
narrow the request.

If you have questions or need further information,  
please do not hesitate to contact me by email, at  
kbrennan@balch.com, or by telephone at (205) 226-3475.

\_4\_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

\_4\_address1: P.O. Box 306

**Easter, Stacy**

---

**From:** kbrennan@balch.com  
**Sent:** Monday, September 15, 2008 11:03 AM  
**To:** FOIAsubmissions  
**Subject:** Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Monday, September 15, 2008 at 11:03:07

---

information: Pursuant to the Freedom of Information Act, 5  
U.S.C. 552, we request information or records regarding  
the Commodity Futures Trading Commission's investigation  
into the conduct of and proceedings against El Paso,  
Dynergy Marketing & Trade and West Coast Power LLC in the  
In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09  
and In re Dynergy Marketing & Trade and West Coast Power  
LLC, CFTC Docket No. 03-03.

All documents and/or information relied upon by  
the CFTC in connection with the following statement(s)  
made in the Order instituting proceedings pursuant to  
6(c) and 6(d) of the Commodity Exchange Act, making  
findings and imposing remedial sanctions, in the matter of  
Dynergy Marketing and Trade and West Coast Power, LLC, CFTC  
Docket No.: 03-03, pending before the Commodities Futures  
Trading Commission:

Dynergy Marketing and Trade knowingly submitted  
the false information to the reporting firms in an attempt  
to skew those indexes to Dynergy Marketing and Trade's  
financial benefit.

I agree to pay any search, review, or copying fees  
that may be incurred in processing this request. In the  
event the CFTC believes the fees will exceed \$500.00, we  
respectfully request notification of an estimate for the  
copying and research so that we have an opportunity to  
narrow the request.

If you have questions or need further information,  
please do not hesitate to contact me by email, at  
kbrennan@balch.com, or by telephone at (205) 226-3475.

\_4\_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

\_4\_address1: P.O. Box 306

**Easter, Stacy**

---

**From:** kbrennan@balch.com  
**Sent:** Monday, September 15, 2008 11:07 AM  
**To:** FOIAsubmissions  
**Subject:** Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Monday, September 15, 2008 at 11:07:15

---

information: Pursuant to the Freedom of Information Act, 5  
U.S.C. 552, we request information or records regarding  
the Commodity Futures Trading Commission's investigation  
into the conduct of and proceedings against El Paso,  
Dynergy Marketing & Trade and West Coast Power LLC in the  
In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09  
and In re Dynergy Marketing & Trade and West Coast Power  
LLC, CFTC Docket No. 03-03.

All documents and/or information relied upon by  
the CFTC in connection with the following statement(s)  
made in the Order instituting proceedings pursuant to  
6(c) and 6(d) of the Commodity Exchange Act, making  
findings and imposing remedial sanctions, in the matter of  
Dynergy Marketing and Trade and West Coast Power, LLC, CFTC  
Docket No.: 03-03, pending before the Commodities Futures  
Trading Commission:

In an effort to ensure that its reported  
information would be used by the reporting firms, Dynergy  
Marketing and Trade caused respondent West Coast Power to  
submit information misrepresenting that West Coast Power  
was a counter-party to the fictitious trades.

I agree to pay any search, review, or copying fees  
that may be incurred in processing this request. In the  
event the CFTC believes the fees will exceed \$500.00, we  
respectfully request notification of an estimate for the  
copying and research so that we have an opportunity to  
narrow the request.

If you have questions or need further information,  
please do not hesitate to contact me by email, at  
kbrennan@balch.com, or by telephone at (205) 226-3475.

\_4\_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

**Easter, Stacy**

---

**From:** kbrennan@balch.com  
**Sent:** Monday, September 15, 2008 11:25 AM  
**To:** FOIAsubmissions  
**Subject:** Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Monday, September 15, 2008 at 11:25:09  
-----

information: Pursuant to the Freedom of Information Act, 5  
U.S.C. 552, we request information or records regarding  
the Commodity Futures Trading Commission's investigation  
into the conduct of and proceedings against El Paso,  
Dynergy Marketing & Trade and West Coast Power LLC in the  
In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09  
and In re Dynergy Marketing & Trade and West Coast Power  
LLC, CFTC Docket No. 03-03.

All documents and/or information relied upon by  
the CFTC in connection with the following statement(s)  
made in the Order instituting proceedings pursuant to  
6(c) and 6(d) of the Commodity Exchange Act, making  
findings and imposing remedial sanctions, in the matter of  
Dynergy Marketing and Trade and West Coast Power, LLC, CFTC  
Docket No.: 03-03, pending before the Commodities Futures  
Trading Commission:

Dynergy Marketing and Trade did not maintain  
required records concerning the information which it  
provided to the reporting firms or the true source of the  
information relayed to those firms as required by  
Commission regulations.

I agree to pay any search, review, or copying fees  
that may be incurred in processing this request. In the  
event the CFTC believes the fees will exceed \$500.00, we  
respectfully request notification of an estimate for the  
copying and research so that we have an opportunity to  
narrow the request.

If you have questions or need further information,  
please do not hesitate to contact me by email, at  
kbrennan@balch.com, or by telephone at (205) 226-3475.

\_4\_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

**Easter, Stacy**

---

**From:** kbrennan@balch.com  
**Sent:** Monday, September 15, 2008 11:38 AM  
**To:** FOIAsubmissions  
**Subject:** Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Monday, September 15, 2008 at 11:37:31

---

information: Pursuant to the Freedom of Information Act, 5  
U.S.C. 552, we request information or records regarding  
the Commodity Futures Trading Commission's investigation  
into the conduct of and proceedings against El Paso,  
Dynegy Marketing & Trade and West Coast Power LLC in the  
In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09  
and In re Dynegy Marketing & Trade and West Coast Power  
LLC, CFTC Docket No. 03-03.

All documents and/or information relied upon by  
the CFTC in connection with the following statement(s)  
made in the Order instituting proceedings pursuant to  
6(c) and 6(d) of the Commodity Exchange Act, making  
findings and imposing remedial sanctions, in the matter of  
Dynegy Marketing and Trade and West Coast Power, LLC, CFTC  
Docket No.: 03-03, pending before the Commodities Futures  
Trading Commission:

From at least January 2000 through June 2002,  
Respondents provided false reports to the reporting firms  
and failed to keep copies of required reports.

I agree to pay any search, review, or copying fees  
that may be incurred in processing this request. In the  
event the CFTC believes the fees will exceed \$500.00, we  
respectfully request notification of an estimate for the  
copying and research so that we have an opportunity to  
narrow the request.

If you have questions or need further information,  
please do not hesitate to contact me by email, at  
kbrennan@balch.com, or by telephone at (205) 226-3475.

\_4\_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

\_4\_address1: P.O. Box 306

**Easter, Stacy**

---

**From:** kbrennan@balch.com  
**Sent:** Monday, September 15, 2008 12:03 PM  
**To:** FOIAsubmissions  
**Subject:** Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Monday, September 15, 2008 at 12:02:49

---

information: Pursuant to the Freedom of Information Act, 5 U.S.C.  
552, we request information or records regarding the  
Commodity Futures Trading Commission's investigation into  
the conduct of and proceedings against El Paso, Dynegy  
Marketing & Trade and West Coast Power LLC in the In re El  
Paso Merchant Energy, L.P., CFTC Docket No. 03-09 and In  
re Dynegy Marketing & Trade and West Coast Power LLC, CFTC  
Docket No. 03-03.

All documents and/or information relied upon by  
the CFTC in connection with the following statement(s)  
made in the Order instituting proceedings pursuant to  
6(c) and 6(d) of the Commodity Exchange Act, making  
findings and imposing remedial sanctions, in the matter of  
Dynegy Marketing and Trade and West Coast Power, LLC, CFTC  
Docket No.: 03-03, pending before the Commodities Futures  
Trading Commission:

The false reports included altering price and  
volume of actual trades and reporting non-existent trades  
using the phones, faxes, and the internet.

I agree to pay any search, review, or copying fees  
that may be incurred in processing this request. In the  
event the CFTC believes the fees will exceed \$500.00, we  
respectfully request notification of an estimate for the  
copying and research so that we have an opportunity to  
narrow the request.

If you have questions or need further information,  
please do not hesitate to contact me by email, at  
kbrennan@balch.com, or by telephone at (205) 226-3475.

\_4\_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

\_4\_address1: P.O. Box 306

**Easter, Stacy**

---

**From:** kbrennan@balch.com  
**Sent:** Monday, September 15, 2008 12:11 PM  
**To:** FOIAsubmissions  
**Subject:** Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Monday, September 15, 2008 at 12:11:26

---

information: Pursuant to the Freedom of Information Act, 5  
U.S.C. 552, we request information or records regarding  
the Commodity Futures Trading Commission's investigation  
into the conduct of and proceedings against El Paso,  
Dynergy Marketing & Trade and West Coast Power LLC in the  
In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09  
and In re Dynergy Marketing & Trade and West Coast Power  
LLC, CFTC Docket No. 03-03.

All documents and/or information relied upon by  
the CFTC in connection with the following statement(s)  
made in the Order instituting proceedings pursuant to  
6(c) and 6(d) of the Commodity Exchange Act, making  
findings and imposing remedial sanctions, in the matter of  
Dynergy Marketing and Trade and West Coast Power, LLC, CFTC  
Docket No.: 03-03, pending before the Commodities Futures  
Trading Commission:

Respondents continued to provide the false trade  
data because they believed that it benefited their trading  
positions to derivatives contracts.

I agree to pay any search, review, or copying fees  
that may be incurred in processing this request. In the  
event the CFTC believes the fees will exceed \$500.00, we  
respectfully request notification of an estimate for the  
copying and research so that we have an opportunity to  
narrow the request.

If you have questions or need further information,  
please do not hesitate to contact me by email, at  
kbrennan@balch.com, or by telephone at (205) 226-3475.

\_4\_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

\_4\_address1: P.O. Box 306

**Easter, Stacy**

---

**From:** kbrennan@balch.com  
**Sent:** Monday, September 15, 2008 12:18 PM  
**To:** FOIAsubmissions  
**Subject:** Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Monday, September 15, 2008 at 12:17:54

---

information: Pursuant to the Freedom of Information Act, 5  
U.S.C. 552, we request information or records regarding  
the Commodity Futures Trading Commission's investigation  
into the conduct of and proceedings against El Paso,  
Dynergy Marketing & Trade and West Coast Power LLC in the  
In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09  
and In re Dynergy Marketing & Trade and West Coast Power  
LLC, CFTC Docket No. 03-03.

All documents and/or information relied upon by  
the CFTC in connection with the following statement(s)  
made in the Order instituting proceedings pursuant to  
6(c) and 6(d) of the Commodity Exchange Act, making  
findings and imposing remedial sanctions, in the matter of  
Dynergy Marketing and Trade and West Coast Power, LLC, CFTC  
Docket No.: 03-03, pending before the Commodities Futures  
Trading Commission:

Dynergy Marketing and Trade enlisted West Coast  
Power to give an appearance of propriety to the false  
data.

I agree to pay any search, review, or copying fees  
that may be incurred in processing this request. In the  
event the CFTC believes the fees will exceed \$500.00, we  
respectfully request notification of an estimate for the  
copying and research so that we have an opportunity to  
narrow the request.

If you have questions or need further information,  
please do not hesitate to contact me by email, at  
kbrennan@balch.com, or by telephone at (205) 226-3475.

\_4\_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

\_4\_address1: P.O. Box 306



**Easter, Stacy**

---

**From:** kbrennan@balch.com  
**Sent:** Monday, September 15, 2008 12:33 PM  
**To:** FOIAsubmissions  
**Subject:** Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Monday, September 15, 2008 at 12:32:44  
-----

information: Pursuant to the Freedom of Information Act, 5  
U.S.C. 552, we request information or records regarding  
the Commodity Futures Trading Commission's investigation  
into the conduct of and proceedings against El Paso,  
Dynergy Marketing & Trade and West Coast Power LLC in the  
In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09  
and In re Dynergy Marketing & Trade and West Coast Power  
LLC, CFTC Docket No. 03-03.

All documents and/or information relied upon by  
the CFTC in connection with the following statement(s)  
made in the Order instituting proceedings pursuant to  
6(c) and 6(d) of the Commodity Exchange Act, making  
findings and imposing remedial sanctions, in the matter of  
Dynergy Marketing and Trade and West Coast Power, LLC, CFTC  
Docket No.: 03-03, pending before the Commodities Futures  
Trading Commission:

During the relevant period for example, as  
relayed in a Dynergy Marketing and Trade e-mail, a Dynergy  
Marketing and Trade employee established the following  
procedure:

Enron owns the index. Unless we start increasing  
our volumes we are going to continue to take the pain on  
the cash index. I will get you the contact for [the  
reporting firm]. I would suggest representing yourself as  
[W]est [C]oast [LLC] . . . we can show offsetting  
transactions on our activity.

I agree to pay any search, review, or copying fees  
that may be incurred in processing this request. In the  
event the CFTC believes the fees will exceed \$500.00, we  
respectfully request notification of an estimate for the  
copying and research so that we have an opportunity to  
narrow the request.

If you have questions or need further information,  
please do not hesitate to contact me by email, at  
kbrennan@balch.com, or by telephone at (205) 226-3475.

**Easter, Stacy**

---

**From:** kbrennan@balch.com  
**Sent:** Monday, September 15, 2008 12:36 PM  
**To:** FOIAsubmissions  
**Subject:** Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Monday, September 15, 2008 at 12:35:49  
-----

information: Pursuant to the Freedom of Information Act, 5  
U.S.C. 552, we request information or records regarding  
the Commodity Futures Trading Commission's investigation  
into the conduct of and proceedings against El Paso,  
Dynergy Marketing & Trade and West Coast Power LLC in the  
In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09  
and In re Dynergy Marketing & Trade and West Coast Power  
LLC, CFTC Docket No. 03-03.

All documents and/or information relied upon by  
the CFTC in connection with the following statement(s)  
made in the Order instituting proceedings pursuant to  
6(c) and 6(d) of the Commodity Exchange Act, making  
findings and imposing remedial sanctions, in the matter of  
Dynergy Marketing and Trade and West Coast Power, LLC, CFTC  
Docket No.: 03-03, pending before the Commodities Futures  
Trading Commission:

Respondents' dual submission of the false  
information to the reporting firms was designed to elude  
detection from the reporting firms by showing trades with  
an actual counterparty.

I agree to pay any search, review, or copying fees  
that may be incurred in processing this request. In the  
event the CFTC believes the fees will exceed \$500.00, we  
respectfully request notification of an estimate for the  
copying and research so that we have an opportunity to  
narrow the request.

If you have questions or need further information,  
please do not hesitate to contact me by email, at  
kbrennan@balch.com, or by telephone at (205) 226-3475.

\_4\_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

\_4\_address1: P.O. Box 306

**Easter, Stacy**

---

**From:** kbrennan@balch.com  
**Sent:** Monday, September 15, 2008 12:41 PM  
**To:** FOIAsubmissions  
**Subject:** Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Monday, September 15, 2008 at 12:41:07

---

information: Pursuant to the Freedom of Information Act, 5  
U.S.C. 552, we request information or records regarding  
the Commodity Futures Trading Commission's investigation  
into the conduct of and proceedings against El Paso,  
Dynegy Marketing & Trade and West Coast Power LLC in the  
In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09  
and In re Dynegy Marketing & Trade and West Coast Power  
LLC, CFTC Docket No. 03-03.

All documents and/or information relied upon by  
the CFTC in connection with the following statement(s)  
made in the Order instituting proceedings pursuant to  
6(c) and 6(d) of the Commodity Exchange Act, making  
findings and imposing remedial sanctions, in the matter of  
Dynegy Marketing and Trade and West Coast Power, LLC, CFTC  
Docket No.: 03-03, pending before the Commodities Futures  
Trading Commission:

Respondents violated 982 of the Act when they  
knowingly delivered false price and volume information,  
including fictitious trades, to the reporting firms.

I agree to pay any search, review, or copying fees  
that may be incurred in processing this request. In the  
event the CFTC believes the fees will exceed \$500.00, we  
respectfully request notification of an estimate for the  
copying and research so that we have an opportunity to  
narrow the request.

If you have questions or need further information,  
please do not hesitate to contact me by email, at  
kbrennan@balch.com, or by telephone at (205) 226-3475.

\_4\_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

\_4\_address1: P.O. Box 306

**Easter, Stacy**

---

**From:** kbrennan@balch.com  
**Sent:** Monday, September 15, 2008 12:55 PM  
**To:** FOIAsubmissions  
**Subject:** Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Monday, September 15, 2008 at 12:55:21  
-----

information: Pursuant to the Freedom of Information Act, 5  
U.S.C. 552, we request information or records regarding  
the Commodity Futures Trading Commission's investigation  
into the conduct of and proceedings against El Paso,  
Dynergy Marketing & Trade and West Coast Power LLC in the  
In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09  
and In re Dynergy Marketing & Trade and West Coast Power  
LLC, CFTC Docket No. 03-03.

All documents and/or information relied upon by  
the CFTC in connection with the following statement(s)  
made in the Order instituting proceedings pursuant to  
6(c) and 6(d) of the Commodity Exchange Act, making  
findings and imposing remedial sanctions, in the matter of  
Dynergy Marketing and Trade and West Coast Power, LLC, CFTC  
Docket No.: 03-03, pending before the Commodities Futures  
Trading Commission:

Respondents specifically intended to report false  
or misleading or knowingly inaccurate market information  
concerning, among other things, trade prices and volumes,  
to manipulate the price of natural gas in the interstate  
commerce.

I agree to pay any search, review, or copying fees  
that may be incurred in processing this request. In the  
event the CFTC believes the fees will exceed \$500.00, we  
respectfully request notification of an estimate for the  
copying and research so that we have an opportunity to  
narrow the request.

If you have questions or need further information,  
please do not hesitate to contact me by email, at  
kbrennan@balch.com, or by telephone at (205) 226-3475.

\_4\_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

**Easter, Stacy**

---

**From:** kbrennan@balch.com  
**Sent:** Monday, September 15, 2008 2:35 PM  
**To:** FOIAsubmissions  
**Subject:** Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Monday, September 15, 2008 at 14:35:16

---

information: Pursuant to the Freedom of Information Act, 5  
U.S.C. 552, we request information or records regarding  
the Commodity Futures Trading Commission's investigation  
into the conduct of and proceedings against El Paso,  
Dynergy Marketing & Trade and West Coast Power LLC in the  
In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09  
and In re Dynergy Marketing & Trade and West Coast Power  
LLC, CFTC Docket No. 03-03.

All documents and/or information relied upon by  
the CFTC in connection with the following statement(s)  
made in the Order instituting proceedings pursuant to  
6(c) and 6(d) of the Commodity Exchange Act, making  
findings and imposing remedial sanctions, in the matter of  
Dynergy Marketing and Trade and West Coast Power, LLC, CFTC  
Docket No.: 03-03, pending before the Commodities Futures  
Trading Commission:

Respondents provision of the false reports and  
their collusion, which was designed to thwart the  
reporting firms' detection of the false information,  
constitutes overt acts and furtherance of the attempted  
manipulation.

I agree to pay any search, review, or copying fees  
that may be incurred in processing this request. In the  
event the CFTC believes the fees will exceed \$500.00, we  
respectfully request notification of an estimate for the  
copying and research so that we have an opportunity to  
narrow the request.

If you have questions or need further information,  
please do not hesitate to contact me by email, at  
kbrennan@balch.com, or by telephone at (205) 226-3475.

\_4\_ name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

**Easter, Stacy**

---

**From:** kbrennan@balch.com  
**Sent:** Monday, September 15, 2008 2:44 PM  
**To:** FOIAsubmissions  
**Subject:** Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Monday, September 15, 2008 at 14:43:59  
-----

information: Pursuant to the Freedom of Information Act, 5  
U.S.C. 552, we request information or records regarding  
the Commodity Futures Trading Commission's investigation  
into the conduct of and proceedings against El Paso,  
Dynergy Marketing & Trade and West Coast Power LLC in the  
In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09  
and In re Dynergy Marketing & Trade and West Coast Power  
LLC, CFTC Docket No. 03-03.

All documents and/or information relied upon by  
the CFTC in connection with the following statement(s)  
made in the Order instituting proceedings pursuant to  
6(c) and 6(d) of the Commodity Exchange Act, making  
findings and imposing remedial sanctions, in the matter of  
Dynergy Marketing and Trade and West Coast Power, LLC, CFTC  
Docket No.: 03-03, pending before the Commodities Futures  
Trading Commission:

Dynergy Marketing and Trade, a non-clearing NYMEX  
member, failed to keep records required of members of the  
contract market, including the records of what Dynergy  
Marketing and Trade relayed to the reporting firms.

I agree to pay any search, review, or copying fees  
that may be incurred in processing this request. In the  
event the CFTC believes the fees will exceed \$500.00, we  
respectfully request notification of an estimate for the  
copying and research so that we have an opportunity to  
narrow the request.

If you have questions or need further information,  
please do not hesitate to contact me by email, at  
kbrennan@balch.com, or by telephone at (205) 226-3475.

\_4\_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

\_4\_address1: P.O. Box 306

**Easter, Stacy**

---

**From:** kbrennan@balch.com  
**Sent:** Monday, September 15, 2008 2:50 PM  
**To:** FOIAsubmissions  
**Subject:** Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Monday, September 15, 2008 at 14:49:43  
-----

information: Pursuant to the Freedom of Information Act, 5  
U.S.C. 552, we request information or records regarding  
the Commodity Futures Trading Commission's investigation  
into the conduct of and proceedings against El Paso,  
Dynergy Marketing & Trade and West Coast Power LLC in the  
In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09  
and In re Dynergy Marketing & Trade and West Coast Power  
LLC, CFTC Docket No. 03-03.

All documents and/or information relied upon by  
the CFTC in connection with the following statement(s)  
made in the Order instituting proceedings pursuant to  
6(c) and 6(d) of the Commodity Exchange Act, making  
findings and imposing remedial sanctions, in the matter of  
Dynergy Marketing and Trade and West Coast Power, LLC, CFTC  
Docket No.: 03-03, pending before the Commodities Futures  
Trading Commission:

By failing to keep the required records,  
including records of what Dynergy Marketing and Trade  
relayed to the reporting firms, Dynergy Marketing and Trade  
violated Commission Regulations 1.31, 1.35 and 1.40.

I agree to pay any search, review, or copying fees  
that may be incurred in processing this request. In the  
event the CFTC believes the fees will exceed \$500.00, we  
respectfully request notification of an estimate for the  
copying and research so that we have an opportunity to  
narrow the request.

If you have questions or need further information,  
please do not hesitate to contact me by email, at  
kbrennan@balch.com, or by telephone at (205) 226-3475.

\_4\_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

\_4\_address1: P.O. Box 306

**Easter, Stacy**

---

**From:** kbrennan@balch.com  
**Sent:** Monday, September 15, 2008 2:52 PM  
**To:** FOIAsubmissions  
**Subject:** Electronic FOIA Request Form

Below is the result of your feedback form. It was submitted by  
(kbrennan@balch.com) on Monday, September 15, 2008 at 14:52:13

---

information: Pursuant to the Freedom of Information Act, 5  
U.S.C. 552, we request information or records regarding  
the Commodity Futures Trading Commission's investigation  
into the conduct of and proceedings against El Paso,  
Dynergy Marketing & Trade and West Coast Power LLC in the  
In re El Paso Merchant Energy, L.P., CFTC Docket No. 03-09  
and In re Dynergy Marketing & Trade and West Coast Power  
LLC, CFTC Docket No. 03-03.

All documents and/or information relating in any  
way to Dynergy Marketing and Trade's independent internal  
investigation including, without limitation, the results  
of that investigation together with all supporting  
documents provided to the Commission staff by Dynergy  
Marketing and Trade and/or West Coast Power, LLC.

I agree to pay any search, review, or copying fees  
that may be incurred in processing this request. In the  
event the CFTC believes the fees will exceed \$500.00, we  
respectfully request notification of an estimate for the  
copying and research so that we have an opportunity to  
narrow the request.

If you have questions or need further information,  
please do not hesitate to contact me by email, at  
kbrennan@balch.com, or by telephone at (205) 226-3475.

\_4\_name: A. Kelly Brennan Esq.

firm: Balch & Bingham LLP

\_4\_address1: P.O. Box 306

\_4\_city: Birmingham

\_4\_state: AL

\_4\_zip: 35201-0306



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA**

BALCH & BINGHAM LLP,                     )  
   )  
                  Plaintiff,                     )  
   )  
v.   )  
   )  
U.S. COMMODITY FUTURES                 )  
TRADING COMMISSION,                     )  
   )  
                  Defendant.                     )

Civ. No.: CV-08-HGD-2281-S

**DEFENDANT COMMODITY FUTURES TRADING COMMISSION'S  
MOTION TO DISMISS FOR FAILURE TO EXHAUST  
ADMINISTRATIVE REMEDIES**

Exhibit B to Declaration of Stacy Easter ---  
CFTC Response to FOIA Request, dated 6 Nov 2008



**U.S. COMMODITY FUTURES TRADING COMMISSION**

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
Telephone: (202) 418-5105  
Facsimile: (202) 418-5124

FOIA  
Compliance Office

November 6, 2008

Kelly Brennan, Esq.  
Balch & Bingham LLP  
P.O. Box 306  
Birmingham, AL 35201-0306

FOIA No.: 08-0141

RE: All documents relied upon by the CFTC regarding various statement(s) made in the Order Instituting Proceedings Making Findings and Imposing Remedial Sanctions in CFTC docket no.: 03-09 and 03-03 (re: Dynegy & El Paso).

Dear Ms. Brennan:

This letter is in partial response to your September 15, 2008, Freedom of Information Act request for the above information.

Staff of the Division of Enforcement has identified material responsive to your request and has determined that your request should be denied in total. Nine hundred and ninety-seven pages consisting of internal memoranda and e-mails are being withheld pursuant to exemption 3 of the Freedom of Information Act, 5 U.S.C. § 552 (b)(3), pertaining to material specifically exempted from disclosure by statute (Section 8(a) of the Commodity Exchange Act, 7 U.S.C. § 12); exemption 5, 5 U.S.C. § 552(b)(5), pertaining to interagency or intra-agency memos or letters, which would not be available by law to a party other than an agency in litigation with the agency; and exemption 7 of the Act, 5 U.S.C. § 552 (b)(7)(A), pertaining to records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with pending enforcement proceedings.

Please be advised that Commission staff has identified additional material that is subject to petition for confidential treatment pursuant to Section 145.9 of the Commission's regulations. In accordance with Section 145.9(d)(7), the submitters (Dynegy Inc. & El Paso Merchant Energy LP) of the confidential treatment requests were notified that a Freedom of Information Act request for the material had been received and had been asked to submit a detailed written justification in support of their confidential treatment request. We have received the justifications (attached) and staff is currently reviewing them to determine whether the request for confidential treatment should be granted or denied. You will be promptly notified when staff has made its determination.

Once the confidential treatment process is resolved, you may, if you wish, file an appeal

for access to information denied you by this letter. Please do not file your appeal until you receive a final response to your request. Your appeal must be in writing and must contain a statement of the grounds upon which you are basing your appeal. Please refer to the FOIA number that has been assigned to this request (FOIA No. 08-0141). Your appeal should be addressed: Freedom of Information Act Appeal, Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 8<sup>th</sup> Floor, 1155 - 21st Street, N.W., Washington, D.C. 20581. Please send a copy of your appeal to the FOIA Compliance Office, Commodity Futures Trading Commission, Three Lafayette Centre, 8<sup>th</sup> Floor, 1155 - 21st Street, N.W., Washington, D.C. 20581. Questions concerning the processing of an appeal should be directed to the Office of the General Counsel at (202) 418-5120.

Please direct any questions you may have regarding the initial processing of your request to me at (202) 418-5011 or [seaster@cftc.gov](mailto:seaster@cftc.gov).

Sincerely,

  
Stacy J. Easter  
Paralegal Specialist